

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Confirmation and Will Writing Services

Chapter 1 – Confirmation Services

Regulation of confirmation agents

Section 90 – Confirmation agents and services

189. **Section 90** defines “confirmation services” and “confirmation agent” for the purposes of this Act.

Section 91 – Approving bodies

Section 92 – Certification of bodies

190. Approving bodies are able to authorise individuals to provide confirmation services, and are responsible for regulating those individuals which they have so authorised (see section 75).
191. These sections set out the process and criteria for becoming an approving body of confirmation agents. Section 91 covers the requirements of the application to the Scottish Ministers, which must include (among other things) the applicant’s proposed regulatory scheme. Section 92 sets out the conditions which must be met before the Scottish Ministers can certify a body as an approving body. This certification may be subject to conditions which the Scottish Ministers may vary by addition or deletion after consultation with the approving body.
192. The Scottish Ministers have a regulation making power (under section 91(6)) to prescribe fees that they may charge applicants for the position of approving body.
193. The Scottish Ministers also have the power (under section 92(8)) to make regulations regarding the application process and, in relation to their capability to act as an approving body, the criteria for certification. This power may be used to set out the application process in more detail.

Section 93 – Regulatory schemes

194. **Section 93** requires the approving body to have a regulatory scheme which allows for individuals who meet the qualifying criteria to be given the right to provide confirmation services, and which regulates those members in the provision of those services. Subsection (2) gives details of what the regulatory scheme must include – a description of training, a code of practice for confirmation agents, sufficient arrangements for professional indemnity, rules about complaints and sanctions. Subsection (3) gives details of what must be included in that code of practice. Subsection (4) sets out the ability of the confirmation agent to appeal against a decision

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by the approving body to revoke, suspend, or attach conditions to their right to provide confirmation services. Subsection (5) requires the approving body, so far as practicable, to observe the regulatory objectives in section 1 of the Act.

Section 94 – Financial sanctions

195. **Section 94** makes specific provision allowing rules under section 93(2)(d)(ii) to provide for financial penalties which may be imposed by an approving body on confirmation agents and about appeals against their imposition. Financial penalties are paid to the Scottish Ministers, though the approving bodies may collect the penalties on their behalf.

Section 95 – Review of own performance

196. **Section 95** requires an approving body to review its own performance annually. The review is to cover its compliance with observing the regulatory objectives under section 93(5), the exercise of its functions in relation to its regulatory scheme, and its compliance with any measures applying to it by virtue of section 100(3). It must also send a report of its review, including a copy of its accounts, to the Scottish Ministers who must lay a copy of the report before the Scottish Parliament. The Scottish Ministers may make further provision in regulations about the review of approved bodies' performance, and reports on reviews of their performance.

Section 96 – Pretending to be authorised

197. This section makes it an offence for a person to pretend to be a confirmation agent and specifies the penalty for that offence.